



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

JERRY L. JOHNSON, §
Petitioner, §
§
vs. § CIVIL ACTION NO. 2:06-0348-HFF-RSC
§
STATE DEPARTMENT OF CORRECTIONS §
et al., §
Respondents. §

ORDER

This case was filed as a 28 U.S.C. § 2254 action. Petitioner is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that the case be dismissed *without prejudice* 1) as a successive Section 2254 petition and 2) because Petitioner has failed to obtain an order from the Court of Appeals for the Fourth Circuit authorizing the Court to consider this matter. The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on September 26, 2006. Petitioner failed to file any objections to the Report. In the absence of objections, the Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985).

After a thorough review of the Report and the record in this case pursuant to the standard stated above, the Court adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Respondents' motion for summary judgment is **GRANTED** only to the extent that Petitioner's action is **DISMISSED** *without prejudice* 1) as a successive Section 2254 petition and 2) because Petitioner has failed to obtain an order from the Court of Appeals for the Fourth Circuit authorizing this Court to consider the matter.

IT IS SO ORDERED.

Signed this 25th day of October, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Petitioner is hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.